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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,445	11/13/2001	A. Neil Barclay	DX 01052K1	1467

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EXAMINER	
QIAN, CELINE X	
ART UNIT	**PAPER NUMBER**
1636	

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/009,445	**Applicant(s)** BARCLAY ET AL.	
	Examiner Celine X. Qian Ph.D.	**Art Unit** 1636	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *9-23*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 3. NOTE: The proposed amendment will not be entered because the amendment creates new issues that require further consideration. The recitation of "wherein the fragment exhibits a functional property of an intact subunit" renders the claim indefinite because it is unclear what is the subunit part of, the binding compound, the anitbody or SEQ ID NO:20? Further, the amendment does not overcome the rejections of the record, thus does not place the application in better form for appeal by reducing the issues for appeal. Therefore, the proposed amendment will not be entered.

Continuation of 11. does NOT place the application in condition for allowance because: The proposed amendment does not overcome the 101 rejection of the record. In response to Applicant's argument with regard to substantial, specific and credible uses, the examiner maintains the position that the specifiction fails to teach a substantial, specific and credible use for the binding compound. Although CD200 is known as a cell surface antigen identified in some specific cell type that are involved in a list of diseases, the specification does not teach which specific disease is the result from the this CD200R. In other words, the specification does not teach which specific pathway in any specific cell type that leads to a specific disease. Thus providing a laundry list of the disease that are associated with the cells expressing said antigen does not provide a specific, substantial and credible function to the CD200R. As such, the antibody to said receptor does not have specific, substantial and credible utility as well. As discussed previously, the teaching of the post filing art is not taught in the appliation, wherein the statue requires that the utility of the claimed invention is known at the time of filing. Moreover, none of reference establishes a direct relationship between the CD200R and the diseases that are alleged to result from the receptor dysfunction. As such, Applicants fail to teach a credible, substantial and specific use for the claimed invention. With regard to the 112 1st paragraph rejection, Applicants argue that production of antibody is well characterized at the time of filing. However, as indicated in the previous office action, the claims are not limited to antibodies to SEQ ID NO:20, it encompasses binding compounds comprising an antigen binding site from an antibody, wherein said antibody binds to a polypeptide comprising mature SEQ ID NO:20 or a fragment. In other wprds, the claimed binding compounds would include those comprising binding sites from an antibody which bind to a polypeptide comprises SEQ ID NO:20 and fragments. Such antibody may not even binds to SEQ ID NO:20 itself. In view of the genus of the claimed invention, the specification fails to describe a representative number of species by their complete structure and other identifying characteristics. Therefore, the written description requirement is not met. In response to Applicant's argument about the enablement rejection, Applicants are again reminded that 1) the claimed scope is not limited to antibody; 2) the statue also requires the specification to teach how to use the claimed invention. As such, the specification fails to teach how to make binding compound that are not antibody and how to use the claimed inventions. In response to Applicant's argument with reqard to the 112 2nd paragraph rejeciton, Applicants are reminded that the examiner does not question how to purify an antibody and how to use said antibody. However, the degree of the purity is unclear with the claim recitation. In other words, the specification fails to define how pure the binding compound needs to be considered "substantially pure." As such, the metes and bounds of the claim cannot be established. For reasons discussed in the previous office action and above, the proposed amendment does not overcome the rejections of the record.

CELIAN QIAN
PATENT EXAMINER